

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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|--------------------------------------|---|--------------------|
| Illinois Commerce Commission         | : |                    |
| On Its Own Motion                    | : |                    |
|                                      | : | Docket No. 15-0512 |
| Amendment of 83 Ill. Admin. Code 412 | : |                    |
| and 83 Ill. Admin. Code 453          | : |                    |

**REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”) submits this Reply Brief on Exceptions relating to the Proposed First Notice Order (the “Proposed Order” or “PO”) and attached rules (“Rules”) issued by the Administrative Law Judges (“ALJs”) on January 19, 2016, and the Brief on Exceptions (“BOEs”) filed by various parties on February 9, 2016. Consistent with ComEd’s proposed exceptions to the Proposed Order and Rule, ComEd’s reply is limited to responding to certain exceptions proposed by the Retail Energy Supply Association (“RESA”), the Staff of the Illinois Commerce Commission (“Staff”), and the Citizens Utility Board (“CUB”) in their Briefs on Exceptions.

ComEd respectfully requests that the Illinois Commerce Commission’s (“ICC” or “Commission”) Final Order in this proceeding adopt the changes to both the Proposed Order and the Rules suggested in ComEd’s BOE, as well as the changes suggested in this Reply BOE.

**I. Reply to RESA**

**A. Commission Authority (Section III of PO)**

During the comment phase of this docket, various retail electric suppliers challenged the Commission’s authority to adopt the proposed rules and questioned the need for the rules. *See* PO at 2-6. On exceptions, only RESA continues to contest the Commission’s authority to adopt

the rules.<sup>1</sup> RESA BOE at 3-4. For the reasons well-articulated by the Proposed Order, Staff, the Attorney General (“AG”), CUB, ComEd, and others, there can be no serious challenge to the Commission’s authority to adopt the Rules, and RESA’s arguments should again be rejected. PO at 4-5.

Although the Illinois Competitive Energy Association’s (“ICEA”) Brief on Exceptions generally accepts the Proposed Order’s Analysis and Conclusion regarding the Commission’s authority, ICEA argues that the Proposed Order should make “specific findings where rule changes are needed to address bad acts that enforcement of current statutes and rules cannot reach.” ICEA BOE at 22. Yet, as ICEA is forced to admit, “it is not a legal prerequisite that the Commission find that a new rule is necessary to punish a bad act in order to have the authority to promulgate the rule”. ICEA BOE at 22, fn. 8. Indeed, abundant evidence has already been proffered by Staff in support of the Rules, and the legal authority cited by AG, CUB, ComEd, and others is clear that the Commission can proactively adopt rules to protect customers. PO at 3-5. In short, no support exists for ICEA’s proposal that the Commission must devote time and resources to an unnecessary findings section.

## **B. Competitive Parity (Section IV of PO)**

In its Brief on Exceptions, RESA continues to argue that the Commission should “consider the effect [additional requirements in Illinois retail electric markets] have on the competitive parity between RES products and default supply service from electric utilities.” RESA BOE at 4-5. Yet, as even RESA partially concedes, the Proposed Order has addressed

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<sup>1</sup> Although the Coalition of Energy Suppliers (“CES”) filed, on February 9, 2016, a Petition to Intervene and “Verified” Brief on Exceptions that purports to support RESA’s Brief on Exceptions, the status of CES’s submissions is unclear, and ComEd in any event objects to the “Verified” Brief on the Exception to the extent it seeks to introduce facts long after the period for submitting verified comments has passed.

RESA's concerns – "[t]he Commission considers the costs to RESs whenever it has been specifically raised." PO at 7 (noting further that cost considerations formed the basis for the Proposed Order's rejection of certain costly proposals); RESA BOE at 6. It is therefore unclear why RESA remains dissatisfied with the Proposed Order – no evidence has been offered in this docket that could support a claim that "competitive parity" is somehow lacking, nor has RESA advanced a concrete proposal on which the Commission could act.

As ICEA, CUB, and ComEd explained in their Comments, moreover, RESA is incorrect in its claims that the "electric utilities ... themselves have variable supply charges." RESA BOE at 5. ComEd's charges for power and energy are fixed by a Commission-approved Illinois Power Agency procurement plan and procurement auction, and are further regulated through Commission-approved tariffs establishing the resulting supply charges (*e.g.*, the Rate BES – Basic Electric Service tariff filed with the Commission). ComEd Reply Comments at 8. Other parties made similar observations and distinctions between ComEd supply service and RES supply service:

ICEA

One of the key difference[s] between a RES supply product and the utility bundled supply product for residential and small commercial customers (procured by the Illinois Power Agency) is that a RES can design and adjust procurement strategies as often as they deem necessary to reflect changes in wholesale markets. *In contrast, most aspects of the utility bundled supply product are procured in Commission-approved relatively inflexible procurement events held by the Illinois Power Agency, and balanced according to utility tariff.*

ICEA Initial Comments at 3 (emphasis added).

CUB

Although it should be obvious to all parties to this proceeding that there are substantial differences between regulated utility supply prices and unregulated RES supply rates that make "competitive parity" irrelevant to the equation, CUB will identify the basic facts

that undermine the claim of the necessity of “competitive parity.” While Illinois is a restructured state, consumers are not forced to choose a supplier and may remain on the regulated utility rate. RES rates are unregulated and RES market their products through various channels including door-to-door marketing and telemarketing, the problems surrounding which are the geneses of the proposed rules. Electric utilities do not “market” their regulated supply rate – it is by definition the “default” rate that customers pay if they do not affirmatively sign up with a RES. The rules at issue in this rulemaking largely surround disclosure of contract provisions and protections against marketing abuses; issue not relevant to utility supply, which is clearly published, does not require a contract, and is comprehensively regulated. Furthermore, the fact that the utility supply rate changes twice a year at known times, the supply portfolio of each utility is fully litigated on an annual basis making regulation of that rate rigorous, and the rate is well publicized before it is charged, is exactly the type of transparency and regulatory oversight that is lacking for RES products.

CUB Reply Comments at 6.

To the extent RESA takes issue with the utility’s supply service, the Proposed Order correctly concludes that such issues must be considered in dockets initiated to consider the utility’s supply service. PO at 7. Indeed, RESA’s Brief on Exceptions expressly agrees with this conclusion. RESA BOE at 6.

As such, RESA’s proposed changes should be rejected, and the Proposed Order’s Analysis and Conclusion section regarding competitive parity should be adopted without modification.

## **II. Reply to Staff**

### **A. In-Person Solicitation (Section 412.120; Section XIII of PO)**

ComEd shares Staff’s praise for “the ALJs’ thoughtful analysis and conclusion that expands the existing door-to-door requirements to include all in-person sales.” Staff BOE at 5. Even so, Staff takes exception to two aspects of the In-person Solicitation rule, and ComEd joins

Staff with respect to its proposed change to Section 412.120(c)(3). In brief, Staff proposes that this Section be revised to include the “requirement that the RES agent wear identification on an outer garment that clearly state[s] the RES agent is not a utility employee.” *Id.* at 6. As Staff notes, some RESs are *already* complying with this proposal, and the statement further strengthens the Rules to protect customers against misrepresentation *and* misunderstanding. *Id.* at 6-7.

**B. Compliance (Section 412.15; Section VII of PO)**

Like ComEd, Staff’s Brief on Exceptions points out that RESA did not propose its new Compliance section until Surreply comments. ComEd BOE at 3-4; Staff BOE at 2. As a result, it is important that the Proposed Order be corrected to reflect that parties were deprived of an opportunity to comment. ComEd therefore recommends that either Staff’s or ComEd’s proposed changes to the Proposed Order be adopted to accurately reflect the timing of RESA’s proposal.

**III. Reply to CUB**

**A. Variable Rate Definition (Section 412.10; Section VI of PO)**

ComEd supports CUB’s proposed clarifications to the definition of “Variable Rate.” CUB BOE at 6-8. In particular, CUB’s revisions recast the definition so that it is stated in the affirmative rather than the negative. Given the importance of the term “variable rate” throughout the Rules, ComEd believes that CUB’s proposal will further minimize the potential for confusion.

**B. Modification of Purchase of Receivables Tariffs (Section XXXI of PO)**

As CUB admits in its Brief on Exceptions, its proposal to consider modifications to the utilities’ purchase of receivables (“POR”) tariffs is “outside the scope of this rulemaking.” CUB BOE at 14. Yet, CUB nevertheless proposes that the Proposed Order be revised such that the

Commission order that a new investigation be initiated to consider CUB's proposal. *Id.* at 15. In support, CUB erroneously claims that Section 16-118(b)(iv) of the Public Utilities Act "governs the POR tariffs" and "allows for the tariff to include 'other just and reasonable terms and conditions.'" CUB BOE at 14-15 (quoting 220 ILCS 5/16-118(b)(iv)).

As ComEd explained in its Brief on Exceptions, however, Section 16-118(b)(iv) does not govern the POR tariffs – that Section governs the utility's offer of a RES single billing option whereby the RES can issue a single bill that reflects its own charges and the utility's charges. ComEd offers this service through its Rider SBO – Single Bill Option. The statutory provision that governs the POR tariffs, on the other hand, is subsection (c) of Section 16-118. 220 ILCS 5/16-118(c); ComEd BOE at 3. Nothing in that Section supports the sort of price capping proposals advocated by CUB. Indeed, this kind of unprecedented price regulation by the Commission in the competitive retail electric market would seemingly foreclose alternative pricing structures currently under consideration, such as time-of-use pricing. ComEd BOE at 2.

CUB's proposed revisions should therefore be rejected, and ComEd's proposed language should be adopted. *See* ComEd BOE at 3.

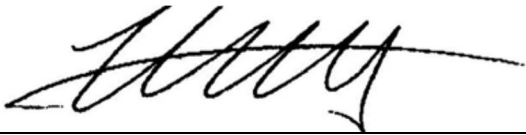
## **CONCLUSION**

ComEd respectfully requests that the foregoing and ComEd's Brief on Exceptions be taken into consideration in the preparation of the First Notice Order and Rules prior to publication.

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Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By 

Mark R. Johnson

Mark R. Johnson  
Eimer Stahl LLP  
224 South Michigan Avenue, Suite  
1100  
Chicago, Illinois 60604  
(312) 660-7600  
[mjohnson@eimerstahl.com](mailto:mjohnson@eimerstahl.com)

Thomas S. O'Neill  
Senior Vice President & General  
Counsel  
Commonwealth Edison Company  
440 South LaSalle Street, Suite 3300  
Chicago, Illinois 60605  
(312) 394-5400  
[thomas.oneill@comed.com](mailto:thomas.oneill@comed.com)

Thomas J. Russell  
10 South Dearborn Street, 49<sup>th</sup> Floor  
Chicago, Illinois 60603  
(312) 394-5157  
[thomas.russell@exeloncorp.com](mailto:thomas.russell@exeloncorp.com)